

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Residential Building
Contractor License of Lynn Olson
Construction; License No. 20131416.

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION

The above-entitled matter came on before Administrative Law Judge Beverly Jones Heydinger ("ALJ") on March 24, 2000, for a prehearing conference. The prehearing conference was held pursuant to a Notice of and Order for Hearing and Notice of Prehearing Conference, dated February 23, 2000.

Michael J. Tostengard, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared on behalf of the Minnesota Department of Commerce ("Department"). The Respondent, Lynn Olson Construction ("Olson"), did not appear in person or by counsel. The record closed upon the Respondent's default on March 24, 2000.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after reviewing the record and may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the Commissioner's decision shall not be made until this Report has been available to the parties to the proceeding for at least ten (10) days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Gary A. Lavasseur, Deputy Commissioner, Enforcement Division, Minnesota Department of Commerce, 133 East Seventh Street, St. Paul, MN 55101, telephone (651) 296-3528, to ascertain the procedure for filing exceptions or presenting argument to the Commissioner.

STATEMENT OF THE ISSUES

1. Did Olson fail to complete work as contracted on a roof for William Klocow?
2. Did Olson fail to respond to the Department's investigation?
3. Should the Commissioner take adverse action against Olson's license?

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On February 29, 2000, a copy of the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges was delivered via certified mail to Lynn Olson Construction, 718 Carney Avenue, Mankato, MN 56001, as appears from an Affidavit of Mailing on file herein.

2. Olson did not appear at the prehearing conference nor did anyone appear on Olson's behalf. Olson did not obtain the ALJ's prior approval to be absent from the prehearing conference, did not file a Notice of Appearance, and did not request a continuance or any other relief.

3. The Notice of and Order for Hearing and Notice of Prehearing Conference contained the following informational warning:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or the hearing in this matter, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's residential building contractor license may be revoked or suspended, Respondent may be censured, and/or a civil penalty may be imposed against Respondent without further proceedings.

4. Because Olson failed to appear, it is in default.

5. Pursuant to Minnesota Rules, part 1400.6000, the allegations contained in the Notice of and Order for Hearing and Notice of Prehearing Conference are taken as true and incorporated by reference into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce are authorized to consider the charges against Olson under Minn. Stat. §§ 326.91, 45.027, subd. 1, 45.024, and 14.50 (1998).

2. Olson received due, proper and timely notice of the charges against it, and of the time and place of the prehearing conference. This matter is, therefore, properly before the Commissioner and the Administrative Law Judge.

3. The Department has complied with all relevant substantive and procedural legal requirements.

4. Under Minn. R. part 1400.6000, a contested case may be decided adversely to a party who defaults. On default, the allegations and the issues set out in

the Notice of and Order for Hearing or other pleading may be taken as true or deemed proved without further evidence.

5. Olson is in default herein as a result of its failure, without the ALJ's prior consent, to appear at the prehearing conference.

6. Olson's failure to complete work called for in the contract with William Klocow violated Minn. Stat. § 326.91, subd. 1 (4)(1998).

7. Olson's failure to respond to the Department's requests for information and the Department's orders to appear constitutes a violation of Minn. Stat. § 45.027, subd. 1a (1998).

8. The violations set forth in Conclusions 6 and 7 subject Olson to discipline and/or civil penalties pursuant to Minn. Stat. §§ 326.91, subd. 1 and 45.027, subds. 6 and 7 (1998).

9. Disciplinary action against Olson is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of the Minnesota Department of Commerce take adverse action against Olson's license, censure Olson, and/or impose a civil penalty upon Olson.

Dated this 28th day of March, 2000.

S/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER

Administrative Law Judge

Reported: Default (no tapes)

NOTICE

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.